



The Arboretum Village

EX PARTE OR LATE FILED

ORIGINAL

VILLAGE OF Lisle

"Small Enough To Be Your Neighbor, Large Enough To Serve Your Needs"

1040 Burlington Avenue

Lisle, Illinois 60532-1898

OFFICE OF

August 24, 1999

RECEIVED

SEP 09 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte Filing in cases WT 99-217; CC96-98**

Dear Chairman Kennard:

The Village of Lisle recently became aware of the upcoming case regarding federal preemption of antenna zoning; right of way management; telephone franchising and permitting; and state and local taxes, as captioned above.

In response to this very disturbing news, on August 2, 1999, the Village of Lisle Mayor & Board of Trustees unanimously passed a motion authorizing Village staff to write to you on their behalf expressing their opposition.

We are certain you will receive mail from across the country in opposition to the proposed rulemaking mentioned above. Most of your mail will probably include point by point reasons for opposing this type of legislation. In contrast, the Village of Lisle asks that the FCC view the situation from a different perspective by looking at **the future of the industries** from our point of view as follows:

The Big Picture:

It is our understanding that in 1996 Congress removed the FCC's authority over rights of way. It is hard to understand why a federal agency, the FCC, is now making new claims that it has jurisdiction over local rights of way. I suppose you might say that now our "flag is up" in Lisle. We find it illogical that members of the FCC are giving consideration to issues wherein the FCC lacks authority to give those considerations. We are thinking that perhaps members of the FCC have not looked at the big picture as we see it. Over **3 years ago** we realized that:

The telecommunications industry and the cable industry will become one industry. As one industry, it will provide a wide array of services including telephony, video conferencing, entertainment programming (cable TV), interactive programming, gaming (gambling), high speed data access and high speed internet access.

This one industry, which I will refer to as the "telecable industry", will be limited to either one monopoly or a handful of monopolistic companies that will use the same technologies to provide telecable services via:

wireline: fiber optic lines for security, distance, and capacity reasons as well as to homogenize the most common services (cable programming and internet access services) nationally. This will provide efficiency and cost-effectiveness through economies of scale. This will not be in the best interest of the public in that the services will be priced nationally versus locally and the actual services will be mundane.

wireless: local spread spectrum via neighborhood street light fixtures affixed transceivers; pizza box home transceivers & receivers; cell sites on mono poles and towers; PCS on local and regional fixtures; satellite services. All wireless services are eventually wireline services but this "last mile" connection will be integrated by the same telecable company.

equipment: combinations of computers, routers, switches, servers will be used to move the information/services from one location to another.

Those companies currently owning upgraded systems rich with fiber optic lines and those companies with current rights-of-way access or municipal facilities leases have positioned themselves for quick picking by the future monopolies. These companies, many of which are small, independent firms, have enormous potential to either make substantial sums of money through the sale of their systems or through mergers with the future monopoly player or monopolistic players.

With that said, it is easy to understand the ongoing assault on local, state and Federal government regulation by the cable industry and by the telephone industry (both wireline & wireless). Although they appear to be acting independently of each other at the moment, their ultimate goal as a whole is to remove all control, including federal, state, and local control over the use of public rights of way. Removing government control will eliminate government monitoring/regulation of their businesses and will increase their profit margins through a reduction in franchise fees or infrastructure maintenance fees for use of public rights-of-way. (They will need these monies to help pay for their acquisitions, mergers, and air wave rights to keep their stockholders happy.) Beyond the fees issue, **they desire to set rates** without interference from the FCC or local regulators.

As a group, the telecommunications companies and cable companies profess independence from each other as if their businesses are not related. They portray themselves as the "Angels of Competition and Free Enterprise" as the best way to keep costs down and improve service for customers. However, nationally, they are all moving in the same direction to become one industry and past experience has proven that they will not keep costs down nor will they improve customer service by being monopolies. We have observed them:

1. fighting along side each other as they are now; (cable companies as a group vs. FCC on rate regulation; telephone companies on mergers such as Ameritech and SBC in Illinois).
2. fighting against each other in the name of competition when in fact for years they had long-range plans to become one company; (TCI Cable buys Multimedia Cablevision in 1997; AT&T (long distance telephone) buys TCI Cable in Illinois in 1998). A few years ago, AT&T constructed massive, expensive, regional fiber optic loops in the suburbs of Chicago for long distance telephone services. Now the possibility exists that the loops will be used to transport cable programming and internet access regionally.
3. placing the state and local governments at odds with each other; (telecommunications industry in Illinois pushes State for Infrastructure Maintenance Fee (IMF) versus old franchise fee method covering use of rights-of-way). This includes all wireless companies. IMF now law. Not to our surprise, now telecom industry is showing signs of challenging IMF. Some companies are protesting payment of the one percent (1%) fee, in writing, each time they pay their fee. They want no fee.

So it is not surprising to us, although it is disturbing to us, that the FCC is in the position they are today. At the prompting of the telecommunications industry, the FCC is now considering FCC Preemption of a **package** of issues:

in cases WT 99217; CC 96-98:

- ☐ antenna zoning;
- ☐ right of way management;
- ☐ telephone franchising and permitting;
- ☐ and state and local taxes

It appears our predictions, years ago, are coming true and we urge you to look at the big picture, rather than the bit parts, and consider the following:

Property Taxes:

It is our understanding that the FCC lacks statutory or constitutional authority to intrude on state and local taxation of telephone companies. You should abide by this division of authority. If you side with the telecommunications companies, you will fall into their set agenda for the FCC. I have been told, on two occasions by local vendors, that the reason they were in such a rush to construct and begin operating their wireless systems was due to extraordinary sums of money they owed to the FCC for the purchase of air rights! Why did the FCC auction off air rights to these new providers at such high costs if the FCC was in fact truly interested in lowering the cost for new telephone providers as proposed in WT 99-217; CC96-98?

Antenna Zoning:

The FCC lacks the authority to do this. It would violate basic property rights a landlord, municipality, or condominium has to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country. Building codes are imposed in part for engineering related safety reasons. Preemption of local codes threatens the health and safety of Lisle residents.

Rights of Way Management:

Local management by the Village of Lisle of locally owned land is essential to protect the public health, safety and welfare of local residents. Congress has specifically prohibited the FCC from acting in this area.

We suggest that the FCC acknowledge the difference between critical services and non-critical services with regard to the placement of infrastructures in municipal rights-of-way. The industries have been partially successful in clouding the differences between essential services (water, sewer, electricity, gas, and telephone emergency) with non-essential services, discretionary purchases such as internet services and entertainment/cable services.

There is usually more than one way for a person to secure both telephone (wireless cell phone or wireless pcs) and cable programming services (satellite dish, rooftop antennae). However, a municipality has only one reasonable avenue for delivering sewer, water, and storm sewer services and that is on public rights-of-way.

We urge the FCC to recognize the valuable critical services provided locally to our residents. Certainly the FCC realizes that rights-of-way land is finite and the priority for use of that land should be for essential, critical services so as to protect the health and safety of our residents.

Telephone Franchising and Permitting:

We understand that you suggest that the combined Federal, state and **local tax burden on new phone companies is too high**. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

As a side note, the telecommunications providers are playing the FCC against local municipalities. They're telling us it's the FCC fault that their telephone rates are high due to the high cost of the auctioning of licenses by the FCC and the cost of federal taxes. In contrast, they're telling you, the FCC, that the municipalities are charging high fees for access to rights of way and charging high local taxes!

The fact that you mention **new phone** companies is an interesting idea. However, if our predictions are correct, and the providers for the nation will be one or two "telecable" companies, then the benefactor of a reduction in all taxes will be the winning monopoly telecable company or a handful of monopolistic telecable providers, **not new phone companies.**

Over the past 4 years, the Village has sent numerous, lengthy letters to the FCC defending the Village's right to maintain local control over Village-owned land. Needless to say, we are growing very weary of the high-powered lobbying efforts of the cable and telecommunications industry in Washington, D.C. The Village of Lisle cannot compete with their ability to conduct face-to-face lobbying or distance lobbying through campaign contributions.

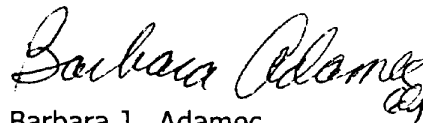
We believe that the overall, long-range goal of the cable and telecommunications companies, namely to become one provider of all services, needs to be acknowledged by the FCC and addressed as such. Federal, State, and local municipalities will undoubtedly have different reasons for demanding specific regulation of the telecable industry and their concerns should be acknowledged and respected as valid concerns.

The FCC would do a service to this country, and to its taxpayers, by taking a lead in the development of a greatly simplified, legal environment whereby the Federal, State, and local municipalities' genuine interests are addressed in a fair and consistent manner nationally.

We are quite certain that you will be hearing from communities across the country in opposition to cases WR 992-17; CC96-98. However, we respectfully suggest that if the FCC looks more closely at the emerging telecable industry and carefully analyzes the future goals of that emerging industry, the FCC would be in a much-enlightened position to better decide which cases are worth hearing, and which cases are not.

Thank you for the opportunity to comment on the upcoming proposed rules which the Village of Lisle opposes based on existing laws; we urge take no action or reject the rules. However, the Village does urge you to look more closely at the overall direction the cable industry and telecommunications industry are taking, namely the direction of becoming a nationwide monopoly or becoming a handful of monopolistic providers. We believe that the answer to the future role of the FCC, the State, and local municipalities will surface once the goals and objectives of the industries in question are publicly recognized and addressed.

Sincerely,
VILLAGE OF LISLE



Barbara J. Adamec
Assistant Village Manager

BJA:ba/ba082499 fcc letter

cc: Carl Doerr, Village Manager / Mayor Ghilardi / Board of Trustees Yuill, Broda, Earley,
Brandonisio, Young & Duker / File: FCC Ex Parte Filing - Cases WT 99-217; CC 96-98

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